

*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.49 of 1997

% 13-11-2007

B.Lakshman and another

.... PETITIONERS

AND

\$ The Union of India, Ministry of Defence, New Delhi, rep. by its
Secretary and two others

...RESPONDENTS

<GIST:

>HEAD NOTE:

! Counsel for the petitioners : Mr.D.V.Seetharama Murthy

^ Counsel for the respondent No.1 : Mr.Deepak Bhattacharjee

^ Counsel for the respondent No.2 : Mr.Y.V.Ravi Prasad

?CASES REFERRED :

1. AIR 1987 A.P. 15

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.49 of 2007:

Date:13-11-2007

Between:

B.Lakshman and another

.. Petitioners

And

**The Union of India, Ministry of Defence, New Delhi rep. By its
Secretary and two others.**

.. Respondents

ORDER:

Heard Sri D.V.Seetharama Murthy, the learned counsel representing the writ petitioners, Sri Deepak Bhattacharjee, the learned counsel representing the first respondent and Sri Y.V.Ravi Prasad, the learned counsel representing the second respondent.

2. This Court issued Rule Nisi on 05.01.2007. In W.P.M.P.No.69 of 2007, this Court made the following order:

“The petitioners who are the elected members of the Cantonment Board, Secunderabad filed the main writ petition aggrieved by the action of the respondents in not permitting them to function as members of the Cantonment Board.

It is not in dispute that after the petitioners were elected vide notification dated 19.05.2006, which was notified by the Government of India under Section 16(1) of the Cantonments Act, 1924, the Cantonments Act 2006 (41 of 2006) has come into force w.e.f. 18.12.2006. By virtue of the said Act, the Cantonment Act, 1924 stood repealed. It is not in dispute that in exercise of powers conferred under clause (b) of sub-sections (1) & (4) of Section 13 of the Act 41 of 2006 the Central Government made a declaration to vary the constitution of Secunderabad Cantonment Board w.e.f. 18.12.2006 up to 31.07.2007 and by a consequential notification dated 18.12.2006 notified constitution of a Board in terms of sub-section (3) of Section 13 of the Act 41 of 2006. It is also not in dispute that the

Board so constituted under the Notification dated 18.12.2006 has taken charge and has been functioning.

Whether the powers under Section 13(1) of the Act 41 of 2006 can be exercised for varying the Board constituted under the repealed Act, in the absence of any specific provision under Act 41 of 2006 for cessation of the Board elected under the repealed Act is a larger question which requires consideration in the main writ petition after the necessary counter-affidavits are filed by all the respondents.

So far as this miscellaneous petition is concerned, it is to be noted that out of the 7 elected members only two members are before this Court seeking a direction to permit them to continue as members of the Cantonment Board. Since the members of the Board constituted under Section 13 (3) of the Act 41 of 2006 have already assumed charge, the direction as prayed for cannot be granted until and unless the notification dated 18.12.2006 is set aside.

That apart, as rightly contended by the learned counsel for the respondents, in view of the savings clause under Section 360 (2) of the Act 41 of 2006 the notification in which the elected Board was notified under the repealed Act which is not in accordance with the provisions of the Act 41 of 2006, prima facie appears to be inoperative on the enforcement of the Act 41 of 2006.

Hence, the directions as prayed for cannot be granted as an interim measure.

Accordingly, W.P.M.P. is dismissed.

However, having regard to the nature of the dispute involved, I deem it appropriate to post the main writ petition for final hearing at an early date. Accordingly, Registry is directed to post the writ petition for final hearing on 05.02.2007 subject to part-

heard.”

3. W.P.M.P.No.760 of 2007 was ordered on 05.01.2007 and by virtue of the same, the third respondent was impleaded as party. It appears that the writ petitioners being unsuccessful in getting interim order, carried the matter by way of Writ Appeal No. 112 of 2007 and the same was dismissed on 06.02.2007.

4. Sri D.V.Seetharama Murthy, the learned counsel representing the writ petitioners had taken this Court through the contents of the affidavit filed in support of the writ petition and also the respective stands taken by the parties and would submit that when the elected term of the body did not expire, the question of issuing such impugned notice is not justified. The learned counsel had also taken this Court through the chronological events, the relevant dates and also the relevant provisions of Cantonment Act, 2006 (hereinafter referred to as ‘the present Act’) and the Cantonment Act, 1924 (hereinafter referred to as ‘the repealed Act’) and would submit that in the light of the language of Sections 12, 30, 34, 60 and 360 of the present Act, it cannot be said that the provisions are retrospective and the present Act being prospective, the period of elected body cannot be reduced by virtue of such notification and at any rate, there are no reasons at all and even otherwise, Section 13(b) of the present Act cannot be said to be applicable to the facts of the case. The learned counsel would submit that the substance of the prayer prayed for in the writ petition to be taken into consideration and the relief can be moulded by this Court depending upon the facts and circumstances of the case.

5. Sri Deepak Bhattacharjee, the learned counsel representing first respondent would submit that under what circumstances, the impugned action had been taken since in the light of the changed situation, in as much as the composition of the body itself is changed under the present Act when compared to the repealed Act, the elected body to be replaced. The learned counsel would also submit that it is a general notification and further the learned counsel would submit that as per his instructions, the elections are going to be held to all these Cantonments in January 2008. The learned counsel also would submit that in such a case, the question of recorded reasons may not be necessary in the light of legislative change. The learned counsel also relied on certain decisions.

6. Sri Y.V. Ravi Prasad, learned counsel representing the second respondent representing had taken this Court through the counter-affidavit and would submit that the substantial stand taken by the second respondent is the same stand taken by the first respondent and only a consequential order was made and the notification as such had not been challenged. The learned counsel also explained the subsequent events and would submit that in the facts and circumstances of the case, the writ petition being devoid of merit and the same is liable to be dismissed.

7. Heard the counsel.

8. The present writ petition is filed by the petitioners viz. B.Lakshman and B.Prabhakar, the elected members of the Cantonment Board, Secunderabad praying for a writ of

mandamus declaring the action of the respondents in not permitting them to function as members of the Cantonment Board by virtue of the order, dated 18.12.2006, as arbitrary and illegal being violative of Articles 14, 21 and 243-P of the Constitution of India, apart from being contrary to the various provisions of the present Act and pass such other suitable orders.

9. The case of the writ petitioners is that they were duly elected members of Ward Nos.2 and 3 respectively in the elections conducted to Cantonment Board on 06.08.2006, results were declared on 07.08.2006 in Form 9 under Rule 9 of the Rules issued under the Cantonment Act. The said result was communicated to the first respondent. In pursuance of the same, the first respondent issued a notification on 23.08.2006 notifying the election of the first petitioner and another petitioner herein along with other candidates. A copy of the same is filed in the material papers for the ready reference of the Court. After the notification of the first respondent, proceedings were issued by the second respondent on 26.08.2006 informing about the special meeting to be held on 30.08.2006, wherein the first petitioner and the another petitioner herein and other candidates were to take oath and the copy of the same is filed in the material papers for ready reference of the Court. Accordingly, all the members elected from their respective wards took oath on 30.08.2006 and thereafter, the election of the Vice president was also held and one Mr.P.Gourishankar was elected as the Vice President of the Cantonment Board. Subsequent to their election as the members of the Board, they transacted the business of the Board while conducting the meetings by

issuing agenda notice and taking consequential decisions in pursuance of the meeting held on 28.10.2006. The extracts of the relevant proceedings are filed in the material papers to show that the Board is functioning by virtue of their election as the members of the Board. Similarly, they were also asked to participate in several meetings of the Board as is evident from the proceedings dated 16.09.2006 and 18.09.2006. All the above proceedings would clearly show that they are functioning as the members of the Cantonment Board. Therefore, all of them have a valid right to continue as such for a period of five years, as such they were elected. Further it is averred that while matters stood thus, the petitioners came to know through a news item appeared in Eenadu Telugu Daily, dated 19.12.2006 that the elected board was dissolved. A copy of the said news item along with translation is filed in the material papers for the ready reference of the Court. Thereafter, the petitioners approached the authorities, then they have issued the proceedings dated 22.12.2006 enclosing the impugned proceedings dated 18.12.2006, wherein it was mentioned that the said action of the respondents in dissolving the elected board under the guise of varying the constitution in the Cantonment Board by virtue of the present Act which is highly illegal, unjust, arbitrary, highhanded and capricious on the part of the respondents, which is tainted with legal mala fides and also contrary to the principles of natural justice, violative of fundamental rights guaranteed under Articles 14, 21, 243-P and various provisions of the Cantonment Act. Therefore, the same has to be set-aside with a further direction to the respondents to continue them as the members of the Cantonment Board for the term for which they were elected. Specific stand has been

taken that the respondents did not issue any notice before issuance of the proceedings nor did they inform about the dissolution of the board except stating in the news item, which appeared on 19.09.2006. The respondents without passing any order with reference to the dissolution of the Board further had not permitted the petitioners to function as members of the Board under the guise of the order, dated 18.12.2006 wherein the Central Government had taken a decision to vary the constitution of the Board by virtue of the provisions of the present Act. Such action is arbitrary and violative of Article 14 of the Constitution of India. Further it is averred that the respondents 1 and 2 have no power to remove the elected members of the Board except by way of power conferred upon them under Section 34 of the present Act. Section 34 of the Present Act deals with removal of members which reads as hereunder:

“34. Removal of members:- (1) The Central Government may remove from a Board any member thereof, who—

- (a) becomes or is found to have been at the time of his election or nomination subject to any of the disqualifications specified in sub-section (2) of section 28 or in section 29; or
- (b) has absented himself for more than three consecutive meetings or three months (whichever is later) of the Board and is unable to explain such absence to the satisfaction of the Board.

Explanation: In computing the aforesaid period of three consecutive months, no account shall be taken of any period of absence with the leave of the Board; or

- (c) has knowingly contravened the provisions of section 32; or
- (d) being a legal practitioner, acts or appears on behalf of

any other person against the Board in any legal proceeding or against the Government in any such proceeding relating to any matter in which the Board is or has been concerned or acts or appears on behalf of any person in any criminal proceeding instituted by or on behalf of the Board against such person.

(e) has himself done or aided or abetted encroachments and illegal constructions on defence land in contravention of the provisions of this Act and rules and bye-laws made thereunder.

(2) The Central Government may remove from a Board any member who, in the opinion of the Central Government, has so abused in any manner his position as a member of the Board as to render his continuance as a member detrimental to the public interests.

(3) The General Officer Commanding-in-Chief, the Command may, on receipt of a report from the Officer Commanding the station remove from a Board any military officer nominated as a member of the Board who is, in the opinion of the Officer Commanding the station, unable to discharge his duties as a member of the Board and has failed to resign his office.

(4) No member shall be removed from a Board under sub-section (1) or sub-section (2) of this section unless he has been given a reasonable opportunity of showing cause against his removal.”

10. Further specific stand has been taken that the respondents do not have power to supersede the Board except for the grounds mentioned in Section 60 of the present Act. Section 60 of the Present Act deals with supersession of the Board and the said provision reads as hereunder:

“60. Supersession of Board: (1) If, in the opinion of the Central

Government, any Board is not competent to perform or persistently makes default in the performance of the duties imposed on it by or under this Act or otherwise by law, or exceeds or abuses its powers, the Central Government may by an order published, together with the statement of the reasons therefore, in the Official Gazette, declare the Board to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and supersede it for such period as may be specified in the order:

Provided that no Board shall be superseded unless a reasonable opportunity has been given to it to show cause against the supersession.

(2) When a Board is superseded by an order under sub-section (1)---

- (a) all members of the Board shall, on such date as may be specified in the order, vacate their offices as such members but without prejudice to their eligibility for election or nomination under clause (c);
- (b) during the supersession of the Board, all powers and duties conferred and imposed upon the Board or under this Act shall be exercised and performed by the Officer Commanding the station, or by such officer as may be authorized by the Central Government, subject to such reservation if any, as the Central Government may prescribe in this behalf; and
- (c) before the expiry of the period of supersession elections shall be held and nominations made for the purpose of reconstituting the Board.

Section 60 of the present Act corresponds to Section 54 of

the repealed Act. Section 54 of the Repealed Act reads as hereunder:

“54. SUPERSESSION OF BOARD:---(1) If, in the opinion of the (Central Government), any Board is not competent to perform or persistently makes default in the performance of the duties imposed on it by or under this Act or otherwise by law, or exceeds or abuses its powers, the (Central Government) may, by an order published, together with the statement of the reasons therefor, in the official Gazette, declare the Board to be incompetent or in default or to have exceeded or abused its powers, as the case may be, and supersede it for such period as may be specified in the order;

Provided that no Board shall be superseded unless a reasonable opportunity has been given to it to show cause against the supersession.

(2) When a Board is superseded by an order under sub-section (1),---

- (a) all members of the Board shall, on such date as may be specified in the order, vacate their offices as such members but without prejudice to their eligibility for election or nomination under Cl.(c);
- (b) during the supersession of the Board, all powers and duties conferred and imposed upon the Board by or under this Act or otherwise by law shall be exercised and performed by the (Officer Commanding the Station) subject to such reservation, if any, as the (Central Government) may prescribe in this behalf; and
- (c) before the expiry of the period of supersession elections shall be held and nomination made for the purpose of reconstituting the Board.”

11. In the light of the Section 60 of the present Act and Section 54 of the repealed Act, it is stated that under either of these provisions, the respondents have no power to dissolve the Board except to supersede the Board or remove the members as per the provisions specified thereunder. Further it is stated that the election notification was issued on 09.05.2006, As per the same, the election was held on 06.08.2006, results were declared on 07.08.2006 and the same was notified by the first respondent by way of notification on 23.08.2006. The oath was administered on 30.08.2006. Meanwhile the present Act came into force. Section 1(3) of the present Act says that it come into force from the date of publication of the Act in the gazette. The same was gazetted in the month of September, 2006. During the said period, the election was completed, oath was taken and the petitioners have transacted the business of the Board. Hence, the term of the office cannot be varied by virtue of the present Act. Hence, the petitioners are to be continued till the expiration of the term for which they were elected. Further a specific stand has been taken that the present Act cannot be said to be retrospective operation. Section 2 of the present Act deals with the definitions. Section 2(zk) of the present Act defines 'ordinary election' means an election held to fill a vacancy in the office of an elected member of a Board arising by efflux of time. Section 360 of the present Act deals with repeals and savings, which reads as under:

“360. Repeals and savings.--- (1) The Cantonments Act, 1924 (2 of 1924) is hereby repealed.

(2) Notwithstanding the repeal of the Cantonments Act, 1924 (2 of 1924),--

- (a) any appointment, notification, order, scheme, rule, form, notice or bye-law made or issued, and any licence or permission granted under the Act shall, in so far as it is not inconsistent with the provisions of this Act continue in force and be deemed to have been made, issued or granted, under the provisions of this Act, unless and until it is superseded by any appointment, notification, order, scheme, rule, form, notice or bye-law made or issued or any licence or permission granted under the said provisions;
- (b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Board shall be deemed to have been incurred, entered into or engaged to be done by, with or for the Board constituted under this Act;
- (c) all budget estimates, assessments, valuations, measurements or divisions made by the Board shall in so far as they are not inconsistent with the provisions of this Act, continue in force and be deemed to have been made under the provisions of this Act, continue in force and be deemed to have been made under the provisions of this Act unless and until they are superseded by any budget estimate, assessment, valuation, measurement or division made by the Board constituted under the said provisions;
- (d) all properties, movable and immovable and all interests of whatsoever nature and kind therein, vested in the Board shall with all rights of whatsoever description, use, enjoyed or possessed by the said Board vest in the Board constituted under this Act;
- (e) all rates, taxes, fees, rents and other sums of money due to the Board shall be deemed to be due to the Board constituted under this Act;

- (f) all rates, taxes, fees, rents, fares and other charges shall, until and unless they are varied by the Board constituted under this Act, continue to be levied at the same rate at which they were being levied by the Board immediately before the commencement of this Act;
- (g) all suits, prosecutions and other legal proceedings instituted or which might have been instituted by or against the Board may be continued or instituted by or against the Board constituted under this Act.”

Section 10 of the present Act falls under Chapter III of Cantonment Boards and this provision deals with Cantonment Board, sub-section (2) of Section 10 of the present Act specifies that every Board shall be deemed to be a municipality under clause (e) of Article 243P of the Constitution for the purpose of-(a) receiving grants and allocations; or (b) implementing the Central Government schemes of social welfare, public health, hygiene, safety, water supply, sanitation, urban renewal and education. Article 243P of the Constitution of India reads as hereunder:

“243P. Definitions:-- In this Part, unless the context otherwise requires,--

- (a) ‘Committee’ means a Committee constituted under article 243S;
- (b) ‘district’ means a district in a State;
- (c) ‘Metropolitan area’ means an area having a population of ten lakhs or more, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous area, specified by the Governor by public notification to be Metropolitan area for the purposes of this Part;
- (d) ‘Municipal area’ means the territorial area of Municipality as

is notified by the Governor;

- (e) 'Municipality' means an institution of self-government constituted under article 243Q;
- (f) 'Panchayat' means a Panchayat constituted under article 243B;
- (g) 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published. "

12. It may be appropriate to have a glance of Article 243Q of the Constitution of India also and the said provision reads as under:

"243Q. Constitution of Municipalities:--(1) There shall be constituted in every State---

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) A Municipal Council for a smaller urban area; and

(c) A Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local

administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.”

13. Further it is averred that even if the stand is taken as a correct stand, the same may be applicable in the case of future elected bodies and not in case of already elected bodies. Further it is stated that these elections were held in pursuance of certain directions of the Courts and in the circumstances, the term of the elected body cannot be put to an end before its expiry except in accordance with law.

14. Counter-affidavits have been filed by the respondents 1 and 2 and they had been sworn to by V.Prem Chand, Chief Executive Officer, Secunderabad Cantonment Board. Substantially the stand taken in both the counter-affidavits appears to be one and the same. It is averred in paragraph 4 of the

counter-affidavit that the Government of India issued three notifications on 18.12.2006, one bringing into force the present Act, second varying the existing Board by making a declaration under Section 13 of the present Act and third reconstituting the Board exercising its power under Section 13 of the Present Act. The Ministry of Defence also issued direction to the Principal Director, Defence Estates on 20.12.2006 directing the Boards should entail delimitation of the existing wards. The Cantonment Boards were varied in all the 62 cantonments in India and Secunderabad Cantonment Board is listed at serial No.56 of the notification, dated 18.12.2006 issued by the Government of India exercising its power under Section 13(4)(i)(b) of the present Act. A new

Board was constituted by notification, dated 18.12.2006 by Government of India, exercising its power under Section 13(3) of Cantonment Act, 2006 and the varied board assumed its office after the aforesaid notification, dated 18.12.2006. The name of Secunderabad Cantonment Board is listed in serial No.56 of the notification and the varied board consists of Officer Commanding Station and the Chief Executive Officer. The reconstituted Board took oath under Section 17 of the present Act and transacted business on 30.12.2006. Further Section 360(1) and 360(2)(a) of the present Act had been referred to in paragraph 5 of the counter-affidavit. It is also stated that the above provisions clearly go to show that all notifications not inconsistent with the present Act are saved or not otherwise. The former board was brought into force under a notification of Government of India, dated 23.08.2006 and the seven elected members assumed their office after the notification. The notification under which the board was brought into existence and the elected members assumed the office is not saved under Section 360 of the present Act for the following reasons:

- (i) The board under Section 12 of Cantonment Act, 2006 consists of (a) Officer Commanding the Station, (b) District Magistrate or an Executive Magistrate, (c) Chief Executive Officer, (d) Health Officer ex officio, (e) Executive Engineer ex officio, (f) three military officers nominated by name by the Officer Commanding the Station by order in writing, and (g) eight members elected under this Act,
- (ii) Under the Cantonment Act (Old Act), the Cantonment Executive Officer was not a member of the board,
- (iii) There were four military officers nominated by the Officer Commanding the Station in place of three members under the

Cantonment Act, 2006.

(iv) There were only seven elected members in place of eight elected members as provided under the Cantonment Act, 2006, and

(v) Further, Cantonment Act, 2006 provided reservation for women for the first time.

Further it is stated that Cantonment Act is a special statute and the power to vary the board is exercised by Government of India under Section 13(1)(b) of the present Act. Section 13(1)(b) of the present Act reads as hereunder:

“that, for the administration of the cantonment, it is desirable, to vary the constitution of the Board in any cantonment under this section, the Central Government may, by notification in the Official Gazette, make a declaration to that effect.”

15. Thus, from the said provision, it is clear that the Central Government is empowered to vary the constituted board in any Cantonment by notification in official gazette and making a declaration to that effect, for the administration of cantonment and if it is found desirable to vary the constitution of board. The notification issued by the Government of India is therefore within four corners of Section 13(1)(b) of present Act. As the notification under which the elected members assumed the office itself is not saved under Section 360 of the present Act, the petitioners do not have the right to question the notification issued by Government of India under Section 13(1)(b) of the present Act. Further it is stated that the Government of India exercising its power under Section 13(2) of the present Act reconstituted the board and board has already assumed the office. Further it is stated that as per Section 10 of the present Act, the Board is deemed to be a

municipality under Article 243P of the Constitution of India only for the purpose of receiving grants and allocations, implementing the Central Government Schemes of social welfare, public health, hygiene, safety, water supply, sanitation, urban renewal and education and not for any other purposes. Even otherwise also, the tenure of the board is as provided under Article 243P of the Constitution of India is five years, but the tenure is subject to the powers vested under Section 13 of the present Act. Section 13 of the present Act contains a non-obstanti clause and hence, Section 13 of the present Act is a statute by itself. Any other provisions in the Act are subject to Section 13 of the present Act and hence, exercising of power by Government of India under Section 13(1)(b) of the present Act in varying the board is within four corners of the statute. Section 60 of the present Act has no application in the present case and hence, the question of giving any prior notice or provide the right of hearing for varying the board would not arise. Further it is stated that in the greater interest of the public and to have a uniform reconstitution of boards throughout the country in all the 62 cantonments and as the earlier notification was not saved under the new statute, the Government of India is left with no other alternative than varying the board and reconstitute the board under the notification, dated 18.12.2006. It is also stated that the Government of India do have the power to vary the board any time for administrative reasons. In the instant case, the board is varied and the varied board is reconstituting only for a period of six months i.e. up to 31.07.2007. The main purpose of varying the board is to start the delimitation work and conduct fresh elections as per the present Act and not otherwise. Hence, the decision taken is

therefore within four corners of the present Act and in public interest as well. It is also stated that the elections were not conducted in 62 cantonments as the bill was moved for bringing into existence the present Act. However, only in case of Secunderabad Cantonment Board, there was direction by the Dehli High Court, which was subsequently upheld by the Apex Court directing the respondents to conduct the election for Secunderabad Cantonment Board. The direction of Delhi High Court was complied in its true force and the elected board members were put in their respective offices. Subsequently the repealed Act by virtue of the present Act had been repealed and the present Act came into force by virtue of notification and in the light of this changed scenario, it cannot be said that the actions impugned are in any way unsustainable. As already stated supra, the second respondent also in the counter-affidavit had taken the same stand. The decision of the Delhi High Court in LPA No.2244/2005, dated 28.11.2005 had been placed before this Court, which is an elaborate order. In paragraph 38, the Division Bench of the Delhi High Court in the

LPA No.2244/2005 referred to supra observed as under:

“However, we cannot, but, express our regret that a board under Section 13 of the Act has not been created for Secunderabad since the year 2000. A board under Section 14 is to be created only in exceptional circumstances, whereas in normal circumstances, a board under Section 13 must be constituted. It is regrettable that for five years no board under Section 13(3) has been constituted by the authorities.”

The learned Division Bench also observed in paragraph 39 as under:

“in the circumstances, we direct that a board under Section 13(3) of the Act be constituted for Secunderabad Cantonment as expeditiously as possible, preferably not later than six months from today. Election of 7 members under sub-clause (f) of Section 13 (3) of the Act should be concluded before this period.”

16. The learned counsel representing the first respondent placed strong reliance on the decision of this Court in **MUNICIPAL COUNCIL, ELURU v. GOVERNMENT OF ANDHRA PRADESH AND ANOTHER**^[1] wherein the learned Judge of this Court while dealing with the dissolution of municipal council under A.P. Municipalities Act, 1965 in the light of Section 62(1) of the said Act observed in paragraph 9 as under:

“Then the only question that remains is whether in arriving at these findings the procedure with the Government had followed was proper, fair and according to the requirements of law. Before a Municipal Council is dissolved S.62(4) of the Act requires a show cause notice to be given to the Municipal Council. Such a notice has been given in this case and, in fact, the Municipal Council has submitted its explanation. After the Municipal Council submitted its explanation and (sic) issued the impugned notification. The only condition for the issuance of such notification mentioned in Section 62(1) is that the Government should be of the opinion that the Municipal Council has exceeded or abused its position or powers. In law, the formation of such an opinion will be treated as a condition precedent for the issuance of notification and the Courts will not condone the exercise of extreme power of dissolving a duly elected body like Municipal Council unless formation of the

requisite opinion is real in the sense that it has substantial evidentiary support. If these conditions are satisfied there can be no complaint made on the basis of the language of S.62(1) of the Act. We have seen that there is more than abundant material on record on the basis of which it would be reasonable for the Government to conclude that the Municipal Council had abused its position and power. Ratifying every one of these illegal acts committed by the Chairman is a grave act of sin committed by an elected body like the Municipal Council. NMR appointments, excess payments, nomination of contracts instead of calling for tenders are all too serious lapses of public minded functionaries, which a Court cannot ignore. I, therefore do not find any serious procedural infirmity in the various steps taken by the Government in dissolving the Municipal Council. At one stage I had myself thought that the Council is being maligned for the acts of its Chairman but on verification, I satisfied myself that the council by its acts of ratification had shown its willingness to flout the law and thus sanctioned abuse of power. It is only right that the Council should pay for what it has done. But Sri Anantha Babu said that the report of the Joint Director, Municipal Administration was based on an ex parte enquiry and that the Council did not have enough opportunity to put forth its case to that officer. This argument of the learned counsel presupposes without, in my opinion, any legal basis that even a fact finding enquiry should be preceded by a notice and hearing. That is not the scheme of the Act nor can such a method, which can only lead to the classical dilemma of *reductio absurdum*, be approved by a Court of law. The facts which have been gathered by that officer are only for the purpose of determining whether there was a *prima facie* case against the Municipal Council for the Government to proceed

against it under S.62 of the Act. At that stage the enquiry is wholly administrative in character and affects no rights of the Council and is subject to no limitations of principles of natural justice. The Supreme Court in its decision reported in *Champaklal v. Union of India*, AIR 1964 SC 1854 held to that effect. I accordingly reject this argument of the learned counsel. It is also argued by Sri Anantha Babu that the Government had not applied its mind and considered the matter. This customary objection cannot have much of application in a case like this where the Council has been found to be guilty of acts of misfeasance mentioned above. It is not a case where it is possible to take a different view of those acts from the one, which has been taken by the Govt. If the Municipal Council has failed to call for tenders contrary to the rules and awarded contracts on nomination contrary to rules and ratified NMR appointments again contrary to law how can anyone say that the Municipal Council has not abused its position or power. Further in this case, the Government did consider every item of the explanation before rejecting the charge of non-application of mind cannot be examined in abstract. The charge of non-application of mind can only be relevant in the context of omission to consider the material facts. As that was not the case here. I reject this contention of the learned counsel. Sri Anantha Babu also argued that there was a duty on the part of the Government to give reasons before taking the extreme step dissolving the Council under S.62 of the Act. He has cited the cases reported in *Chowgu & Co. v. Union of India*, AIR 1971 SC 202, *Ranganath v. Daulatrao*, AIR 1975 SC 214, *Siemens Engg. & Mfg. Co. v. Union of India*, AIR 1976 SC 1785 and *M/s. Neelam Wines Police Commr., Hyderabad*, AIR 1981 Andh.Pra 191, etc. Although giving of reasons is salutary safeguard

against abuse of power in public functionaries and should, therefore be insisted upon in every conceivable case, I am of the opinion that principle cannot be applied without reference to the requirements of statutory scheme. It is under S.62(I) of the Act that the Government dissolves a Council by a notification. Now that section does not expressly require reasons for the dissolution to be given in the notification. Notification is normally an order of the Government and does not contain statement of reasons. There is no other provision under which the requirement of giving reasons can be accommodated within the scope of S.62 of the Act. For that reason, I hold that the theory that reasons shall be given in all cases cannot apply to the scheme of S.62(I) of the Act. Of course, Mr.Suryanarayana Murthy, the learned Government Pleader had cited a judgment of the Supreme Court reported in Tara Chand v. Delhi Municipality, AIR 1977 SC 567 where it has been held that there is no legal obligation for a statutory Tribunal to give reasons for its decision unless such an obligation is one arising under the statute. Tara Chand case (mentioned supra) had distinguished the decisions reported in Bhagat Raja v. Union of India, AIR 1967 SC 1606, Travancore Rayons Ltd. v. Union of India, AIR 1971 SC 862 and the Siemens Engg. & Mfg. Co. v. Union of India (mentioned supra) and reiterated the rule laid down by the Supreme Court in Madhya Pradesh Industries Limited v. Union of India, AIR 1966 SC 671 which held that every order appealable under Art.136 of the Constitution need not be a speaking order and that omission to give reasons for the decision is itself not a sufficient ground for quashing it. In view of my finding that the scheme of S.62 would not admit of any argument that makes the giving of reasons an inexorable necessity for the validity of a quasi-judicial order, I do not think it necessary to attempt to

reconcile these somewhat reconcilable views expressed by the Supreme Court from time to time. Accordingly, I hold that the impugned order in this case is not vitiated in any way, for the reason that statement of reasons is not appended to the notification. This, of course, does not mean that an order would be upheld even in a case where there are no reasons at all. Existence of reasons is a condition precedent, for the exercise of the powers under S.62 of the Act. But, making a statement of reasons is no part of the scheme under S.62 of the Act. For those reasons, I reject this argument of the learned counsel.”

17. It is no doubt true that in the present case, the elected body had been duly constituted only in the light of and in pursuance of the directions made by the learned Division Bench of the Delhi High Court. It is also not in controversy that the term of the elected body did not complete at all. It is also not in serious dispute that the present action would neither fall under Section 34 nor under Section 60 of the present Act. Certain submissions were made in relation to the specific constitutional status conferred on these bodies by virtue of certain constitutional provisions referred to supra. No doubt, normally in a democratic set up, the duly elected bodies may have to be continued till the expiry of the term unless or otherwise, the said term can be put to an end to by specific powers conferred by statutory provisions. It is no doubt true that in the relief prayed for in the writ petition only consequential order had been questioned. But, however, the averments made in the affidavit filed in support of the writ petition may have to be taken into consideration as well in appreciating the facts and circumstances in the given case and the appropriate relief can be moulded. Certain

submissions were made that the relief prayed for in the writ petition itself being defective, the same is liable to be dismissed on that ground alone. The contesting parties are conscious of what actually had been challenged in the light of the averments made in the affidavit filed in support of the writ petition. Hence, this Court is of the considered opinion that this cannot be taken as a serious legal infirmity.

18. The only question which may have to be decided is that in the light of Section 13(1)(b) of the present Act read along with Section 360 of the present Act whether the impugned actions are to be upheld or liable to be quashed in the light of the grounds raised by the petitioners.

19. The language of Section 13(1)(b) of the present Act had already been referred to supra. The words “that, for the administration of the cantonment, it is desirable, to vary the constitution of the Board in any cantonment under this section, the Central Government may, by notification in the Official Gazette, make a declaration to that effect” would assume lot of importance. In this context, Section 12 of the present Act dealing with the constitution of Cantonment Boards also may have to be glanced at. Section 13 of the repealed Act dealing with the constitution of cantonment boards reads as hereunder:

“13. Constitution of Cantonment Boards.---(1) Cantonments shall be divided into three classes, namely:--

(i) Class I Cantonments, in which the civil population exceeds ten thousand;

(ii) Class II Cantonments, in which the civil population exceeds two thousand five hundred, but does not exceed ten thousand; and

(iii) Class III Cantonments, in which the civil population does not exceed two thousand five hundred.

(2) For the purposes of sub-section (1), the civil population shall be calculated in accordance with the latest official census, or, if the Central Government, by general or special order, so directs, in accordance with a special census taken for the purpose.

(3) In class I Cantonments, the Board shall consist of the following members, namely;

(a) The Officer Commanding the station or, if the Central Government so directs in respect of any cantonment, such other military officer as may be nominated in his place by the officer Commanding-in-Chief, the Command;

(b)(an Executive Magistrate) nominated by the District Magistrate;

(c) the Health Officer;

(d)the Executive Engineer;

(e) four military officers nominated by name by the Officer Commanding the station by order in writing;

(f) seven members elected under this Act.

(4) In Class II Cantonments, the Board shall consist of the following members, namely:

(a) the Officer Commanding the station, or, if the Central Government so directs in respect of any cantonment, such other military officer as may be nominated in his place by the Officer Commanding-in-Chief, the Command;

(b) (an Executive Magistrate) nominated by the District Magistrate;

(c) the Health Officer;

(d) the Executive Engineer;

(e) (i) in cantonments of which the civil population exceeds seven thousand five hundred, three military officers.

(ii) in cantonments of which the civil population exceeds five thousand, but does not exceed seven thousand five hundred, two military officers,

(iii) in cantonments of which the civil population does not exceed five thousand, one military officer, nominated by name by the Officer Commanding the station by order in writing;

(f) such number of members elected under this Act as is equal to the number of members constituted or nominated by or under Cls. (b) to (e).

(5) In Class III Cantonments, the Board shall consist of the following members, namely:--

(a) the officer Commanding the station, or if the Central Government so directs in respect of any cantonment, such other military officer as may be nominated in his place by the officer Commanding-in-Chief, the Command;

(b) one military officer nominated by name by the Officer Commanding the station by order in writing;

(c) one member elected under this Act.

6. The officer Commanding the station may, if he thinks fit, with the sanction of the officer Commanding-in-Chief, the Command, nominate in place of any military officer whom he is empowered to nominate under C.L.(e) of sub-section (3), Cl.(e) of sub-section (4) or Cl. (b) of sub-section (5), any person, whether in the service of the Government or not, who is ordinarily resident in the cantonment or in the vicinity thereof.

7. Every election or nomination of a member of a Board and every vacancy in the membership thereof shall be notified by the

(Central Government) in the official gazette.”

20. On a careful comparison of the provisions, there is no serious dispute or controversy between the parties that the constitution of the present Boards under the present Act substantially vary in different aspects when compared to such constitution contemplated under the repealed Act. Hence, it is clear that the same being inconsistent with the provisions of the present Act, such action taken under the repealed Act by virtue of Section 360 of the present Act, cannot be said to be saved.

21. On a careful analysis of the whole factual matrix, this Court is of the considered view that the impugned notification issued by the first respondent and the consequential notification impugned in the present writ petition, these were issued only in the public interest, especially in the light of the clear Legislative change in between the repealed Act and the present Act and hence, the exercise of power by the first respondent under Section 13(1)(b) of the present Act being in accordance with law the same cannot be found fault with. That being so, the impugned consequential order, which is being challenged in the present writ petition, also cannot be found fault. Apart from this aspect of the matter, it is stated that a decision had already been taken to hold elections to these bodies at an early date. Thus, this Court does hope that the true democratic spirit would be followed and the elections to these bodies would be held at an early date as represented by Sri Deepak Bhattacharjee, the learned counsel representing the first respondent. Except recording this observation, no other relief can be granted in favour of

the writ petitioners.

22. Accordingly, with the above observations, the writ petition is hereby dismissed. There shall be no order as to costs.

P.S.NARAYANA, J.

Date:13.11.2007
CCM

Note:
L.R. copy to be marked.
B/O
ccm